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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,143	10/23/2003	Kulvir Singh Bhogal	AUS920030492US1	9523
47959	7590	03/28/2007	EXAMINER	
IBM CORP. (AVE) C/O LAW OFFICE OF ANTHONY ENGLAND PO BOX 5307 AUSTIN, TX 78763-5307			KUMAR, ANIL N	
		ART UNIT		PAPER NUMBER
				2109
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/28/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/692,143	BHOGAL, KULVIR SINGH
	<b>Examiner</b>	<b>Art Unit</b>
	Anil N. Kumar	2109

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>23 October 2003</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

1. This action is in response to the original filing of October 23<sup>rd</sup>, 2003. Claims (1-21) are pending and have been considered below.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 15-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 15-21 are drawn to a computer program product. Examples of computer readable media as per the specifications [0039] includes "...transmission-type media such as digital and/or analog communications links, e.g., the Internet".

Even though Internet can be considered as a physical article, the transmission-type media itself is not a physical article. The transmission-type by itself is not a series of steps or acts and this is not a process. Also, transmission-type by itself is not a physical article or object and as such is not a machine or manufacture.

Furthermore, transmission-type by itself is not a combination of substances and therefore not a compilation of matter. Thus, a transmission-type by itself does not fall within any of the four categories of invention. Therefore, Claims 15-21 are not statutory.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being unpatentable over Cheng et al. (US 6,151,643).

Claims 1, 8 and 15: Cheng et al. disclose à method for deploying/updating software, comprising the steps of: providing a Web site on a computer system coupled to a network for presenting a user with an interface, wherein the computer system has an array of pre-built, post-load images/executables stored thereon for combinations of hardware and the software that the user may select (i.e. ... system for updating diverse software products... col 6 lines 11-30 and Fig. 1);

- receiving from the user a selection of software applications for deploying to a target computer system; (i.e. ...user may select one or more software products ... col 8 line 21-31 and Fig. 4 under Application select box)
- receiving from the user a selection of hardware for the target system and responsively determining what drivers correspond to the indicated hardware;

(i.e. ...user may select one or more software products ... col 8 line 21-31 and Fig. 4 under Application/Driver select box)

- and selecting a certain one of the post-load images, wherein the selected image has the software applications selected by the user and the drivers for the hardware selected by the user (i.e. ... displays the list of applicable software... col 7 lines 62-64 and Fig. 4)

Claims 2, 9 and 16: Cheng et al. disclose a method for deploying/updating software, as in claims 1, 8 and 15 above, respectively. Furthermore, Cheng et al. disclose

- receiving a first order from the user for the certain image of the selected software applications deployable to the target system hardware, including a selection by the user of a method for delivery of the selected image; (i.e. ... for each selected software update... col 8 lines 32-36 and Fig. 5)
- and sending the user a loading utility with the selected image, wherein such a loading utility enables transferring the post-load image to the target computer system (i.e.... client application downloads the software updates... col 8 lines 36-43) without relying on the target computer system having an operating system shell or boot diskette (i.e. sending a physical media to the client, like preconfigured OS with applications that can be installed manually).

Claims 3, 10 and 17: Cheng et al. disclose a method for deploying/updating software, as in claims 2, 9 and 16 above, respectively. Furthermore, Cheng et al. disclose wherein the sending of the loading utility with the selected image includes sending the loading utility on bootable media, and wherein the utility includes instructions for causing the target system to transfer the image to a hard drive of the target system responsive to the target system booting to the utility on the bootable media when the target system is turned on. (i.e.... client application performs the installation, executing any necessary decompression, installation, or setup applications necessary to install... col 9 lines 3-10 and Fig. 2)

Claims 4, 11 and 18: Cheng et al. disclose a method for deploying/updating software, as in claims 2, 9 and 16 above, respectively. Furthermore, Cheng et al. disclose

- maintaining a record of the order for the software applications and drivers included in the certain image that is sent, wherein the record is associated with an order identifier and user identifier; (i.e. ... specifies one exemplary schema of the user profile database... col 10 lines 33-44 and Fig.14)
- receiving a second order for the user, including the user or order identifier; retrieving the record for the first order responsive to the user or order identifier; (i.e. ...user logs in... to determine the list of installed software products... col 7 lines 11-56 and Fig. 2)

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- presenting a list of the software applications and drivers included in the certain image that was sent for the first order; (i.e. ...displays the list of applicable software... col 7 lines 62-64 and Fig. 2)
- and receiving a selection indicating ones of the software programs of the first order to update for the second order or indicating software programs for the second order in addition to those of the first order. (i.e.... for selected software client software performs an installation... col 8 lines 32-33)

Claims 5, 12 and 19: Cheng et al. disclose a method for deploying/updating software, as in claims 2, 9 and 16 above, respectively. Furthermore, Cheng et al. disclose

- maintaining a record of the order for the software applications and drivers included in the certain image that is sent, wherein the record is associated with an order identifier and user identifier; (i.e. ... specifies one exemplary schema of the user profile database... col 10 lines 33-44 and Fig.14)
- receiving a second order for the user, including the user or order identifier; retrieving the record for the first order responsive to the user or order identifier; (i.e. ...user logs in... to determine the list of installed software products... col 7 lines 11-56 and Fig. 2)
- and presenting, responsive to the user or order identifier, a list of suggested updates for the software programs of the first order (i.e. ...illustrates a sample

user interface display of applicable software updates... ... col 7 lines 64-66  
and Fig. 4)

Claims 6, 13 and 20: Cheng et al. disclose a method for deploying/updating software, as in claims 2, 9 and 16 above, respectively. Furthermore, Cheng et al. disclose

- maintaining a record of the order for the software applications and drivers included in the certain image that is sent, wherein the record is associated with an order identifier and user identifier; (i.e. ... specifies one exemplary schema of the user profile database... col 10 lines 33-44 and Fig.14)
- receiving a second order for the user, including the user or order identifier; retrieving the record for the first order responsive to the user or order identifier; (i.e. ...user logs in... to determine the list of installed software products... col 7 lines 11-56 and Fig. 2)
- and presenting, responsive to the user or order identifier, a list of suggested updates for the software programs for the second order in addition to first order (i.e. ...illustrates a sample user interface display of applicable software updates... ... col 7 lines 64-66 and Fig. 4. Note the repetitive nature of the flow diagram in Fig. 2, that clearly demonstrates the process for second or third time the user is requesting updates.)

Claims 7, 14 and 21: Cheng et al. disclose a method for deploying/updating software, as in claims 2, 9 and 16 above, respectively. Furthermore, Cheng et al. disclose

- maintaining a record of the order for the software applications and drivers included in the certain image that is sent, wherein the record is associated with an order identifier and user identifier; (i.e. ... specifies one exemplary schema of the user profile database... col 20 lines 33-44 and Fig.14)
- receiving a second order for the user, including the user or order identifier; retrieving the record for the first order responsive to the user or order identifier; (i.e. ...user logs in... to determine the list of installed software products... col 7 lines 11-56 and Fig. 2)
- receiving user information computer system about needs of the user; (i.e. see Figs. 3 and 13a-13e)
- maintaining a profile of the user, wherein the profile is associated with the user identifier and the received user information; (i.e. ... specifies one exemplary schema of the user profile database ... col 20 lines 33-59 and Fig. 14)
- and presenting, responsive to the user information, a list of suggested updates for the software programs of the first order or a list of suggested software programs for the second order in addition to those of the first order (i.e. ...the user may limit the list to only those software products that need updating... ... col 8 lines 10-20 and Figs. 2 ,4)

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
  - a. Colligan et al. (US 6,298,443 B1) disclose a method and system for supplying a custom software image to a computer system
  - b. Drake et al. (US 2003/0028869 A1) discloses a Method and computer program product for integrating non-redistributable software applications in a customer driven installable package
  - c. Herrero (US 7,143,409 B2) discloses a Automated entitlement verification for delivery of licensed software
  - d. Pashupathy et al. (US 6,078,951) disclose a method and apparatus for automating a software delivery system by locating, downloading, installing, and upgrading of viewer software
  - e. Rodriguez et al. (US 6,487,718 B1) discloses Method and apparatus for installing applications in a distributed data processing system

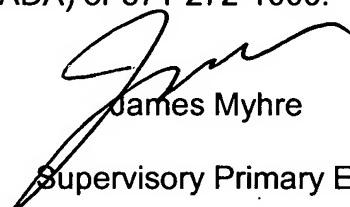
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anil N. Kumar whose telephone number is (571) 270-1693. The examiner can normally be reached on Mon-Fri EST (Alternate Fridays off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on (571) 272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ANK

3/12/2007



James Myhre  
Supervisory Primary Examiner